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10/797,501	03/10/2004	Jeffrey Dunaway	LA144/000LA-U	3978
24350 7590 01/12/2007 STITES & HARBISON, PLLC 400 W MARKET ST SUITE 1800 LOUISVILLE, KY 40202-3352			EXAMINER LUONG, VINH	
			ART UNIT	PAPER NUMBER
			3682	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
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Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/797,501	Applicant(s) DUNAWAY ET AL.	
	Examiner Vinh T. Luong	Art Unit 3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.


Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


Vinh T. Luong
Primary Examiner

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/14/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 3682.
2. The drawings are objected to because the drawings are not in compliance with 37 CFR 1.84. See the informalities, e.g., listed in the attached Form PTO-948 attached.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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4. Claims 2, 6, and 14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 2, 6, and 14 recite "said plunger is biased toward the second position." However, page 7 of the specification merely describes that "[a]lthough it is not necessary, in certain embodiments, the plunger 14 is slidably secured to the front portion 22 of the body 12 and biased toward a second position, shown in Figures 1 and 1A, using, *for example*, a spring." (Emphasis added. More importantly, the drawings do not show, *inter alia*, a means for biasing the plunger 14, such as, the spring, and how the means for biasing the plunger is structurally cooperative with other claimed elements, such as, the plunger 14, the body 12, etc. so that the plunger 14 is biased toward the second position as claimed.

It is unclear as to how Applicant makes/uses the biased plunger as claimed. In other words, claims 2, 6, and 14 contain subject matter (i.e., biased plunger) which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The term, such as, “moveable” in claims 1, 5, and 13 is vague and indefinite in the sense that things which may be done are not required to be done. For example, in claim 1, the plunger 14 is vertically moveable but not structurally required to be vertically moved with respect to the body 12. See “discardable” in *Mathis v. Hydro Air Industries*, 1 USPQ2d 1513, 1527 (D.C. Calif. 1986), “crimpable” in *Application of Collier*, 158 USPQ 266 (CCPA 1968), “removable” in *In re Burke Inc.*, 22 USPQ2d 1368, 1372 (D.C. Calif. 1992), and “comparable” in *Ex parte Anderson*, 21 USPQ2d 1241, 1249 (BPAI 1992).

It is unclear whether the term that appears at least twice, such as, “a catch” in claim 3/1 refers to the same or different things. See double inclusion in MPEP 2173.05(o).

The terms “distinct” and “visible” in claims 12 and 20 are relative terms, which render the claims indefinite. The terms “distinct” and “visible” are not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear, e.g., what objective standardized test(s) is(are) required in order to determine whether the color of the inner surface is distinct from the color of the outer surface. See the term “aesthetically pleasing” in *Datamize LLC v. Plumtree Software Inc.*, 75 USPQ2d 1801 (Fed. Cir. 2005).

Claims 1 and 13 are rejected under 35 USC 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP 2172.01. The omitted elements are the structural element(s) that make(s) the plunger 14 moving vertically with respect to the body 12 (e.g., the means for vertically moving the plunger).

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Claim 5 is rejected under 35 USC 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP 2172.01. The omitted elements are the structural element(s) that make(s) the plunger 14 slidably secured to the body 12 (e.g., the means for sliding of the plunger 14).

Claims 2, 6, and 14 are rejected under 35 USC 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP 2172.01. The omitted elements are the un-illustrated structural elements that bias(es) the plunger 14 toward the second position (e.g., the means for biasing the plunger).

Claims 1 and 13 are rejected under 35 USC 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP 2172.01. The omitted structural cooperative relationships are the structural element(s) that make(s) the plunger 14 moving vertically with respect to the body 12 (e.g., the means for vertically moving the plunger).

Claim 5 is rejected under 35 USC 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP 2172.01. The omitted structural cooperative relationships are the structural element(s) that make(s) the plunger 14 slidably secured to the body 12 (e.g., the means for sliding the plunger 14).

Claims 2, 6, and 14 are rejected under 35 USC 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP 2172.01. The

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omitted structural cooperative relationships are the un-illustrated structural elements that bias(s) the plunger 14 toward the second position (e.g., the means for biasing the plunger).

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3, 5-8, and 13-15, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Looker et al. (US Patent No. 5,765,978 cited by Applicant).

Regarding claim 1, Looker teaches a track fitting 10, 10a used in connection with a track 12 extending along an item (a cargo. *Ibid.* column 1, line 7+) for securing a covering (a cargo net) to said item, the track fitting 10, 10a comprising:

a body 16, 22, 24, 26 including at least one foot 28 adapted to be received in one of a series of openings 20 defined by the track 12, said body 16, 22, 24, 26 further being adapted to receive and secure a portion of the covering or a catch extending from the covering; and

a plunger 14 placed adjacent to and vertically moveable with respect to said body 16, 22, 24, 26, said plunger 14 being moveable between a first position (Fig. 2b) that allows movement of the track fitting 10, 10a along the track 12 and a second position (Figs. 1 and 2a) in which said plunger 14 engages one of the openings 20 defined by the track 12, preventing further movement of the track fitting 10, 10a along the track 12. *Ibid.* claims 1-15.

Claim 1 and other claims below are anticipated by Looker since Looker teaches each and every positively claimed element in the claim. On the other hand, referring the track fitting to the intended use elements, such as, the track, the item, and the covering is not accorded

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patentable weight. It is well settled that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then, it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Moreover, it has long been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138 (CCPA 1946).

Regarding claim 2, said plunger 14 is biased (by a spring 32) toward the second position.

Regarding claim 3, said body 16, 22, 24, 26 of the track fitting 10, 10a is substantially C-shaped, including a first integral foot 28 and a second integral foot 28 defining an opening 16a there between adapted to receive and secure a portion of the covering or a catch extending from the covering.

Regarding claim 5, Looker teaches a system including a covering (a cargo net. *Ibid.* column 1, lines 3-50) and a fitting 10, 10a for securing said covering to a track 12, said fitting 10, 10a comprising:

a body 16, 22, 24, 26 supported by at least one integral foot 28 adapted to be received by each of a series of openings 20 defined by the track 12, a portion of said body 16, 22, 24, 26 being adapted for engaging the covering; and

a plunger 14 slidably secured to said body 16, 22, 24, 26 and having a lower end 14a adapted to be received by each of the openings 20 defined by the track 12, wherein said plunger 14 is movable between a first position (Fig. 2b) that allows movement of the track fitting 10, 10a

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along the track 12 and a second position (Figs. 1 and 2a) in which the plunger 14 engages one of the openings 20 defined by the track 12.

Regarding claim 6, see regarding claim 2 above.

Regarding claim 7, said body 16, 22, 24, 26 of the track fitting 10, 10a includes a substantially C-shaped portion 16, 22, 24, 26 for engaging said covering and a second portion 34 over which said plunger 14 is slidably secured.

Regarding claim 8, see a locking mechanism 30, 38, 40, 18, 18a for temporarily disabling the movement of said plunger 14. Ibid. claims 2-4, 11, and 12.

Regarding claim 13, Looker teaches a system for securing cargo that includes a track 12 extending substantially about the periphery of the cargo and a covering (a cargo net) that is positioned over and substantially encloses said cargo, the improvement comprising a track fitting 10, 10a having a body 16, 22, 24, 26 with a least one foot 28 adapted to be received in one of a series of openings 20 defined by the track 12, said body 16, 22, 24, 26 further being adapted to receive and secure a portion of the covering or a catch extending from the covering, and a plunger 14 secured adjacent to and vertically moveable with respect to said body 16, 22, 24, 26, said plunger 14 being moveable between a first position (Fig. 2b) that allows movement of the track fitting 10, 10a along the track 12 and a second position (Figs. 1 and 2a) in which said plunger 14 engages one of the openings 20 defined by the track 12, preventing further movement of the track fitting 10, 10a along the track 12.

Regarding claims 14 and 15, see regarding claims 2 and 3 above.

9. Claim 1, as best understood, is rejected under 35 U.S.C. 102(b) as being anticipated by Ruff (US Patent No. 5,975,822).

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Ruff teaches a track fitting 10 used in connection with a track 12 extending along an item (a floor. *Ibid.* column 2, line 8+) for securing a covering (a seating or other equipment. *Ibid.* column 1, line 5+) to said item, the track fitting 10 comprising:

a body 1 (Fig. 1) including at least one foot 80 adapted to be received in one of a series of openings 14a (Fig. 2) defined by the track 12, said body 1 further being adapted to receive and secure a portion of the covering or a catch extending from the covering; and

a plunger 8 placed adjacent to and vertically moveable with respect to said body 1, said plunger 8 being moveable between a first position that allows movement of the track fitting 10 along the track 12 and a second position in which said plunger 8 engages one of the openings 14a defined by the track 12, preventing further movement of the track fitting 10 along the track 12. *Ibid.* claims 1-3.

Claim 1 is anticipated by Ruff since Ruff teaches each and every positively claimed element in the claim. On the other hand, referring the track fitting to the intended use elements, such as, the track, the item, and the covering is not accorded patentable weight. It is well settled that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then, it meets the claim. See *In re Casey* and *In re Otto, supra*. Moreover, it has long been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison, supra*.

10. Claims 1, 4, 5, 7, and 9, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Matthews (US Patent No. 4,850,769 cited by Applicant).

Regarding claims 1 and 5, Matthews teaches a track fitting 14 used in connection with a track 15 extending along an item 13 for securing a covering (the cover is defined by the unnumbered cords extending across the item 13 in Fig. 1) to cover said item 13, the track fitting 10 comprising:

a body 16 (Fig. 2) including at least one integral foot 23 adapted to be received in one of a series of openings 20 defined by the track 15, said body 16 further being adapted to receive and secure a portion of the covering or a catch 30 extending from the covering; and

a plunger 21 placed adjacent to and vertically moveable with respect to said body 16, said plunger 21 being moveable between a first position that allows movement of the track fitting 14 along the track 15 and a second position in which said plunger 21 engages one of the openings 20 defined by the track 15, preventing further movement of the track fitting 14 along the track 15. Ibid. claims 1 and 2.

Claims 1 and 5 are anticipated by Matthews since Matthews teaches each and every positively claimed element in the claim. On the other hand, referring the track fitting to the intended use elements, such as, the track, the item, and the covering is not accorded patentable weight. It is well settled that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then, it meets the claim. See *In re Casey* and *In re Otto, supra*. Moreover, it has long been held that the recitation that an element is "adapted to" perform a

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function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison, supra*.

Regarding claim 4, a projection 36 extends through said plunger 21, said projection 36 defines an aperture (unnumbered) for receiving a cable or the like 41 to impede the vertical movement of the plunger 21. See *In re Casey* and *In re Otto, supra*.

Regarding claim 7, said body 16 of the track fitting 14 includes a substantially C-shaped portion 31, 32 for engaging said covering and a second portion 33, 34 over which said plunger 21 is slidably secured.

Regarding claim 9, see regarding claim 4 above.

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 13 and 16, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over admitted prior art in view of Matthews.

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Regarding claim 13, admitted prior art is described in lines 1-3 of Applicant's Jepson claim 13.

Matthews teaches the improvement comprising a track fitting 10 comprising:

a body 16 (Fig. 2) including at least one integral foot 23 adapted to be received in one of a series of openings 20 defined by the track 15, said body 16 further being adapted to receive and secure a portion of the covering or a catch 30 extending from the covering; and

a plunger 21 placed adjacent to and vertically moveable with respect to said body 16, said plunger 21 being moveable between a first position that allows movement of the track fitting 14 along the track 15 and a second position in which said plunger 21 engages one of the openings 20 defined by the track 15, preventing further movement of the track fitting 14 along the track 15. Ibid. claims 1 and 2.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Matthews' track fitting for the system of admitted prior art as taught or suggested by Matthews.

Regarding claim 16, a projection 36 extends through said plunger 21, said projection 36 defines an aperture (unnumbered) for receiving a cable or the like 41 to impede the vertical movement of the plunger 21. See *In re Casey* and *In re Otto, supra*.

14. Claims 10-12 and 17-20, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Matthews in view of Haas (US Patent No. 6,715,820 filed on September 23, 2002).

Regarding claims 10 and 17, Matthews teaches the invention substantially as claimed. However, Matthews does not teach the ends of the cable secured to one another.

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Haas teaches to secure the ends of the cable 60, 72, 74, etc. to one another in order to prevent the removal of the cable.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to secure the ends of the cable to one another in order to prevent the removal of the cable as taught or suggested by Haas.

Regarding claims 11 and 18, Matthews teaches the invention substantially as claimed. However, Matthews does not teach a tracking label secured to the ends of the cable.

Haas teaches the tracking label 64, etc. secured to the ends of the cable 60, 72, 74, etc. in order to track the cargo.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to secure the tracking label to the ends of the cable in order to track the Matthews' cargo as taught or suggested by Haas.

Regarding claims 12 and 20, Matthews teaches the invention substantially as claimed. However, Matthews does not teach the covering having inner and outer surfaces with distinct colors.

Haas teaches the covering 56, 120 having inner and outer surfaces with distinct colors (e.g., different woven and nonwoven materials) in order to detect tampering or damage to the covering. Ibid. column 3, lines 36+.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the covering having inner and outer surfaces with distinct colors (e.g., different woven and nonwoven materials) in order to detect tampering or damage to Matthews' covering as taught or suggested by Haas.

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Regarding claim 19, Matthews teaches the invention substantially as claimed. However, Matthews does not teach the covering constructed from a material when cut, signals that the cargo has been tampered with.

Haas teaches the covering 56, 120 constructed from a material when cut, signals that the cargo has been tampered with. Ibid. column 3, lines 36-64 and claims 1-23.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct Matthews' covering from a material when cut, signals that the cargo has been tampered with as taught or suggested by Haas.

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Stotzer et al. (Figs. 1-11), Dowd (Figs. 1-20), Beck (aperture 36), and Fenner (plunger 52).


16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Luong

January 8, 2007



Vinh T. Luong
Primary Examiner